

HALL & ASSOCIATES

1629 K Street, NW
Suite 220
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Email: ethomas@hall-associates.com

March 10, 2021

VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Facsimile: (617) 918-1102
Email: r1.foia@epa.gov

**RE: FOIA Request Regarding Final Maine “Letter to CSO-related bypass communities”
and Transmittal**

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2.

Background

From mid-2013 through early 2014 EPA Region I was in communications with Maine DEP regarding a draft letter to clarify the issue of CSO-related bypasses. An early draft of this letter is attached. This letter was finalized with comments from EPA and sent to Maine DEP for transmittal to Maine permittees in early 2014.

Request

This request seeks a copy of the final version of the attached letter that was sent to Maine DEP and the document transmitting the final letter.

Please note that this request only seeks the *final* letter and its transmittal to the delegated state and therefore, this request does not seek any predecisional information.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$50.00. If the requested documents are withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

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If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary documents are duplicated.

Respectfully,

//s// Erin Thomas

Erin Thomas

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**Attachment 1 – Draft Maine DEP Letter Re: Changes to
CSO-Related Bypass Permit Conditions**



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PATRICIA W. AHO
COMMISSIONER

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Date, 2013

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Contact
Facility
Address
e-mail

RE: Changes to CSO-Related Bypass Permit Conditions

Dear Contact:

The U.S. Environmental Protection Agency (EPA) recently submitted comments to the Maine Department of Environmental Protection (DEP) on a draft Maine Pollutant Discharge Elimination System (MEPDES) permit for a publicly owned treatment works (POTW) that authorizes a bypass of secondary treatment during wet weather [referred to as combined sewer overflow (CSO)-related bypass]. There are 16 CSO-related bypass facilities/communities in Maine that are affected by the EPA's comments: Augusta (GAUD), Bangor, Bath, Brewer, Bucksport, Calais, Gardiner, Lewiston-Auburn (LAWPCA), Lincoln, Old Town, Portland East End, Presque Isle, Rockland, Saco, Skowhegan, and South Portland. There are two general types of discharge scenarios for CSO-related bypass facilities in Maine: those with a direct discharge of primary treated wastewater and those that blend the primary effluent with secondary effluent prior to discharge. In both scenarios, a certain portion of wastewater passing through the facility headworks bypasses secondary treatment. In this letter, the Department summarizes how the recent comments from EPA will affect the terms and conditions of your MEPDES permit.

Alternatives to CSO-related bypasses

EPA has indicated that a current evaluation of feasible alternatives must be available at the time of permit renewal in order to determine whether the CSO-related bypass should be allowed. EPA regulations prohibit bypasses and provide for enforcement of that prohibition unless the bypass is unavoidable to prevent severe property damage to the secondary treatment system and that there is no feasible alternative to the bypass.¹ EPA considers the feasible alternative threshold to be met "if the record shows the secondary treatment system is properly operated and maintained, that the system has been designed to meet secondary limits for flows greater than peak dry weather flow, plus an appropriate quantity of wet weather flow, and that it is either technically or

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¹ 59 Fed. Reg. at 18,693 and 40 CFR Part 122.41(m)(4).

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

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financially infeasible to provide secondary treatment at the existing facilities for greater amounts of wet weather flow."² EPA's CSO Control Policy states that it is the responsibility of the permittee to document that the criteria for allowing a CSO-related bypass are met and provides that the study of feasible alternatives in the facility's CSO Control Plan (*i.e.*, Long Term Control Plan) may provide sufficient support to allow CSO-related bypasses in the MEPDES permit.³ The DEP will determine on a case-by-case basis whether an updated feasible alternatives evaluation is necessary, and in large part, this decision will depend on the degree of changes in the collection system and treatment facility, user fees as a percentage of median household income, and availability of information already available in the record. The DEP anticipates that updated cost analysis information may be required if the record does not contain adequate information to support such a finding.

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Blended effluent

EPA has recently commented that facilities with blended primary and secondary effluent prior to discharge are subject to secondary treatment regulations at 40 CFR Part 133, and compliance must be evaluated at the point of discharge, unless impractical or infeasible.⁴ At these facilities, primary effluent from the CSO-related bypass is an internal waste stream for which effluent limitations have not been promulgated. At this time, DEP is not proposing to impose internal effluent limitations in permits for the CSO-related bypass prior to blending with secondary treated wastewater.

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The fundamental change in regulating discharges from facilities with CSO-related bypasses that are blended with secondary treated wastewater is that compliance monitoring for secondary treatment standards will shift to a point after the primary and secondary waste streams have been blended. This may be accomplished by physically changing the sampling point or, where not feasible, by mathematically combining analytical results for the two waste streams.

During a May 28, 2013 teleconference with EPA Region 1, EPA stated that the DEP may provide relief from enforcement of secondary treatment regulations for facilities with blended effluent based on the results of a cost effectiveness evaluation. A POTW may conduct analyses to demonstrate whether or not the blended effluent can consistently comply with secondary treatment limits. Also, where a combined sewer POTW determines that its blended effluent cannot consistently comply with secondary limits during wet weather, and there is no feasible alternative to the CSO-related bypass, it may propose effluent limitations for wet weather related discharges of blended effluent to be used for the next permit term. Upon reissuance the assessment of feasible alternatives must be repeated. In any case, the discharge must not violate applicable water quality standards. Use of discretion regarding enforcement of secondary treatment regulations during wet weather events will be site-specific and

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² 59 Fed. Reg. at 18,694.

³ 59 Fed. Reg. at 18,693.

⁴ 40 CFR Part 122.45(h).

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developed to encourage continued improvements to the sewer collection system. Where a POTW with a CSO-related bypass is capable of meeting secondary treatment requirements for its blended effluent and the record demonstrates that cost effective measures to further reduce overflows and bypasses have been undertaken, on a case-by-case the POTW does not need to provide a further feasible alternatives analysis unless there have been changed circumstances, but permits for these facilities must contain a provision requiring that full secondary treatment capacity be maximized prior to initiating a CSO-related bypass.

The secondary treatment regulations⁵ do not contain daily maximum effluent limitations for BOD and TSS. The DEP has been using a daily maximum concentration limit of 50 mg/L for secondary treated wastewater as best professional judgment of best practicable treatment. This standard was developed and approved by the Board of Environmental Protection prior to NPDES delegation and promulgation of secondary treatment regulations into State rule that are consistent with the Clean Water Act. The DEP has discussed this standard with EPA and is considering waiving the requirement to comply with numeric daily maximum limitations for BOD and TSS during CSO-related bypass discharges. The DEP is currently reviewing this issue for final resolution.

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Upon permit renewal, the DEP will carry forward a requirement to monitor and report the frequency and volume of CSO-related bypasses to assist in evaluating the compliance with secondary treatment regulations at the point of discharge, and will eliminate all numeric limitations (namely, bacteria and total residual chlorine) associated with this internal waste stream. The more stringent of either water quality-based or technology-based secondary treatment limits will apply at the point of discharge.

Direct discharge of primary treated wastewater

EPA's CSO Control Policy provides that all wet weather flows passing through the headworks of the POTW must receive at least primary clarification and solids and floatables removal and disposal, and disinfection.⁶ For facilities that do not blend primary and secondary treated wastewater prior to discharge, as is the case where the CSO-related bypass is directly discharged after primary settling and chlorination, EPA has stated that separate technology-based or water quality-based effluent limitations, whichever is more stringent, must be imposed at the point of discharge. However, "the CSO Control Policy does not define specific design criteria or performance criteria for primary clarification."⁷ DEP has determined that the effluent quality from a properly designed, operated and maintained existing primary treatment system satisfies the technology-based requirements for primary clarification and solids removal. The DEP will evaluate and establish on a case-by-case basis water quality-based limits on direct discharges of CSO-related bypasses as necessary to ensure these dischargers do not cause or contribute to non-attainment of applicable water quality standards.

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⁵ 40 CFR, Part 133.102

⁶ 59 Fed. Reg. at 18,693.

⁷ Combined Sewer Overflows Guidance for Long-Term Control Plan, EPA 832-B-95-002, p. 3-13.

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The DEP has identified Bucksport, Calais, Gardiner, Presque Isle, Rockland, and Saco as having facilities that directly discharge primary treated wastewater subject to these effluent limitations.

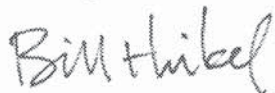
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The DEP is carefully proceeding with implementation of these changes upon permit renewal. If you have questions, or comments that may be helpful to understand as we move ahead, please contact Bill Hinkel or Brian Kavanah of the DEP's Division of Water Quality Management or Brian Pitt or David Webster of EPA's Region 1 office using the contact information below.

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Sincerely,



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Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality
bill.hinkel@maine.gov
ph: 207.485.2281

ec: Brian Kavanah, DEP Brian.W.Kavanah@maine.gov
Bill Hinkel, DEP bill.hinkel@maine.gov
Brian Pitt, EPA pitt.brian@epa.gov
David Webster, EPA Webster.David@epamail.epa.gov
Mick Kuhns, DEP
Gregg Wood, DEP
David Breau, DEP
John True, DEP
Sterling Pierce, DEP

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